

**REMARKS**

Claims 1-25 are pending in this application. By this Amendment, claim 1 is amended and claim 4 is cancelled. Claims 5-11 and 14-25 have been withdrawn from consideration. No new matter is added.

Page 2 of the Office Action asserts that Applicants' use of Chapters 10.03, 10.07 and 10.08 of the ISPE is immaterial with regard to the restriction made under PCT Rules 13.1 and 13.2. Page 75 of the ISPE is the beginning of Chapter 10, Unity of Invention and specifically discusses Rule 13.2. This document can be found at [www.wipo.int/pct/en/texts/pdf/ispe.pdf](http://www.wipo.int/pct/en/texts/pdf/ispe.pdf) which is linked from the U.S. Patent and Trademark Office website at [www.uspto.gov/cgi-bin/exitconf/internet\\_exitconf.pl?target=www.wipo.int/pct/en/texts/pdf/ispe.pdf](http://www.uspto.gov/cgi-bin/exitconf/internet_exitconf.pl?target=www.wipo.int/pct/en/texts/pdf/ispe.pdf). Applicants respectfully assert that Chapters 10.03, 10.07 and 10.08 are material in explaining how PCT Rule 13.2 should be interpreted. For the reasons discussed below, at least the feature of a first region extending substantially parallel to a seat back can be found in some of the species and cannot be found in the applied art. Therefore, lack of unity of invention has not been established.

Claims 1-4, 12 and 13 were rejected under 35 U.S.C. §102(e) over Tanase et al., U.S. Patent Application Publication No. 2004/0124615. Claim 4 has been cancelled, rendering its rejection moot. The rejection with respect to claims 1-3, 12 and 13 is respectfully traversed.

Claim 1 calls for a first region extending substantially parallel to the seat back. The Office Action, on page 3, alleges that Tanase's horizontal section 27 corresponds to the first region of claim 1. The Office Action also alleges that horizontal section 27 is substantially parallel to Tanase's seat back 13. Applicants respectfully disagree.

The airbag in Tanase has a U-shape portion (connecting portion 24) with a horizontal section 27, a front vertical section 28(a) and a rear vertical section 28(b), where horizontal

section 27 corresponds to the lower portion of the U-shape. Applicants respectfully assert that the horizontal section 27 is not substantially parallel to seat back 13 because the seat back 13 extends substantially in the vertical direction. This can be seen in both Fig. 3 and especially Fig. 7A of Tanase, where horizontal section 27 is shown as approximately perpendicular to seat back 13.

Claim 1 also calls for a first region that is thin in the vehicle width direction in the inflated state that is divided into sections in the vertical direction, and a gas passage that is provided between the sections.

In rejecting cancelled claim 4, the Office Action alleges that Tanase's horizontal section 27 corresponds to a first region that is thin and that Tanase's upper chamber 25 and lower chamber 26 correspond to the sections and that front passage 29 and rear passage 30 correspond to the gas passage provided between the sections. Applicants respectfully disagree.

Applicants respectfully assert that the Office Action's assertions are not reasonable because Tanase's horizontal section 27 is not divided into sections. Tanase's horizontal section 27 is thin in a vehicle width direction in an inflated state (see Tanase at Fig. 4) but horizontal section 27 clearly is not divided into sections in the vertical direction (see Tanase at Figs. 3 and 4). Further, because Tanase's horizontal section 27 is not divided into sections, one of ordinary skill in the art cannot reasonably interpret Tanase's horizontal section 27 as having gas passages provided between the sections.

Further, Applicants respectfully assert that the Office Action's assertion that Tanase's upper chamber 25 and lower chamber 26 correspond to the sections of claim 1 is unreasonable because upper chamber 25 and lower chamber 26 refer to sections of Tanase's overall airbag, not Tanase's horizontal section 27. Consequently, one of ordinary skill would not interpret Tanase as alleged in the Office Action.

Claims 2, 3, 12 and 13 are patentable by reason of their dependency from independent claim 1, as well as for the additional features they recite.

It is respectfully requested that the rejection be withdrawn.

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



James A. Oliff  
Registration No. 27,075

Steven D. Jinks  
Registration No. 62,760

JAO:SDJ

Attachments:

Petition for Extension of Time  
ISPE Chapter 10, Unity of Invention, Page 75

Date: February 19, 2009

**OLIFF & BERRIDGE, PLC**  
**P.O. Box 320850**  
**Alexandria, Virginia 22320-4850**  
**Telephone: (703) 836-6400**

<b>DEPOSIT ACCOUNT USE AUTHORIZATION</b> Please grant any extension necessary for entry; Charge any fee due to our Deposit Account No. 15-0461
--



## Chapter 10

### Unity of Invention

#### Determination of Unity of Invention

*Article 17(3)(a); Rule 13; Section 206*

10.01 An international application should relate to only one invention or, if there is more than one invention, the inclusion of those inventions in one international application is only permitted if all inventions are so linked as to form a single general inventive concept (Rule 13.1). With respect to a group of inventions claimed in an international application, unity of invention exists only when there is a technical relationship among the claimed inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" is defined in Rule 13.2 as meaning those technical features that define a contribution which each of the inventions, considered as a whole, makes over the prior art. The determination is made on the contents of the claims as interpreted in light of the description and drawings (if any).

*Rule 13.2; AI Annex B, Part 1(b)*

10.02 Whether or not any particular technical feature makes a "contribution" over the prior art, and therefore constitutes a "special technical feature," is considered with respect to novelty and inventive step. For example, a document discovered in the international search shows that there is a presumption of lack of novelty or inventive step in a main claim, so that there may be no technical relationship left over the prior art among the claimed inventions involving one or more of the same or corresponding special technical features, leaving two or more dependent claims without a single general inventive concept.

*Rule 13.2*

10.03 Lack of unity of invention may be directly evident "*a priori*," that is, before considering the claims in relation to any prior art, or may only become apparent "*a posteriori*," that is, after taking the prior art into consideration. For example, independent claims to A + X, A + Y, X + Y can be said to lack unity *a priori* as there is no subject matter common to all claims. In the case of independent claims to A + X and A + Y, unity of invention is present *a priori* as A is common to both claims. However, if it can be established that A is known, there is lack of unity *a posteriori*, since A (be it a single feature or a group of features) is not a technical feature that defines a contribution over the prior art.

10.04 Although lack of unity of invention should certainly be raised in clear cases, it should neither be raised nor persisted in on the basis of a narrow, literal or academic approach. There should be a broad, practical consideration of the degree of interdependence of the alternatives presented, in relation to the state of the art as revealed by the international search or, in accordance with Article 33(6), by any additional document considered to be relevant. If the common matter of the independent claims is well known and the remaining subject matter of each claim differs from that of the others without there being any unifying novel inventive concept common to all, then clearly there is lack of unity of invention. If, on the other hand, there is a single general inventive concept that appears novel and involves inventive step, then objection of lack of unity does not arise. For determining the action to be taken by the examiner between these two extremes, rigid rules cannot be given and each case is considered on its merits, the benefit of any doubt being given to the applicant.

10.05 From the preceding paragraphs it is clear that the decision with respect to unity of invention rests with the International Searching Authority or the International Preliminary Examining Authority. However, the Authority should not raise objection of lack of unity of invention merely because the inventions claimed are classified in separate classification